

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No. 4404 of 2014 (O&M)

Date of decision: 05.05.2016

Balwinder Kumar and others

...Appellant(s)

Versus

Rattan Chand and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. A.S. Manaise, Advocate,
for the appellants.

Mr. Arvind Kashyap, Advocate,
for the caveator/respondents.

JITENDRA CHAUHAN, J.

CM-10186-C-2016

This is an application for condonation of delay of 39 days in re-filing the appeal. It is averred that the appeal was filed on 21.03.2014, within limitation but the same was returned with objections on 22.03.2014. Thereafter, delay was caused as the clerk to the counsel mistakenly put the paper-book in some other brief.

Keeping in view the averments made in the application and the accompanying affidavit, there appears to be sufficient cause for allowing the same. The delay of 39 days in refiling the present

appeal is hereby condoned subject to all just exceptions.

Main case

The challenge in the instant second appeal is to the judgment and decree dated 02.03.2010, passed by learned Additional Civil Judge (Senior Division), Pathankot (in short, 'the trial Court'), whereby suit filed by the original plaintiff, Romesh Chander (since deceased and now represented by LRs) for specific performance of agreement to sell dated 14.05.1999, was dismissed and to the judgment and decree dated 12.11.2013, passed by learned Additional District Judge, Pathankot (in short, 'the first appellate Court') vide which appeal filed by plaintiff-appellants was partly allowed for refund of earnest money of Rs.31,667/- to them along with simple interest @ 6% per annum from the date of agreement till its final realization.

It is the case of the plaintiff-appellants that defendant Nos.1 to 4, being owners agreed to sell the land in question to original plaintiff-Romesh Chander to the extent of 1/3rd and to one Balbir Singh to the extent of remaining 2/3rd share, for a total consideration of Rs.5,50,000/-, vide agreement to sell dated 14.05.1999. The prospective purchasers paid earnest money of Rs.95,000/- including Rs.31,667/- being share of the original plaintiff. It was agreed that sale deed would be executed on or before 31.12.1999, after receiving balance sale consideration and in default thereof, they agreed to return double the amount of earnest money. The original plaintiff always

remained ready and willing to perform his part of the contract but the defendants avoided the performance on one pretext or the other. Later on, the original plaintiff came to know that defendant No.3 in connivance with defendant Nos.1, 2 and 4, sold land measuring 14 kanals 06 marlas, to defendant No.5, by way of impugned sale deed dated 21.10.1999, without any lawful right and in total disregard to the agreement to sell in favour of the original plaintiff. The sale in favour of defendant No.5 is a nullity and so is the mutation sanctioned on the basis of said sale deed. The original plaintiff served notice upon defendant Nos.1 to 5 on 30.12.1999. On the appointed day, the original plaintiff remained present in the office of Joint Sub Registrar, but the defendants did not turn up. The original plaintiff got executed sworn affidavit but the Joint Sub Registrar refused to attest the same since the defendants were influential persons. On the following day, the original plaintiff moved a complaint and the Sub Registrar, Pathankot attested his affidavit on that day. It is further case of the plaintiff that he came to know that defendant Nos.1, 2 and 4 had also sold land measuring 03 kanals 06 marlas vide sale deed dated 23.12.1999 to defendant Nos.6 and 7 and such sale is also a nullity. Even otherwise, the purchaser of such sale, namely, Vidyadhari (defendant No.7 in the suit) was signatory to the agreement to sell in favour of the original plaintiff. The original plaintiff had also sought to injunct the defendants from dispossessing him from the suit property

forcibly and illegally.

In the joint written statement filed by defendant Nos.1, 2 and 6, they admitted the claim of the original plaintiff in toto.

Defendant Nos.3 and 4, namely, Vimla Devi and Kanta Devi, contested the suit controverting the claim of the original plaintiff. To the same effect, is the version of defendant No.5, namely, Pankaj Kumar, the vendee. It is the case of defendant No.5, that he is a *bona fide* purchaser of a part of the suit land for value and without notice. After sale, he came in possession of the suit land.

After hearing learned counsel for the parties and appreciating the evidence brought on record, learned trial Court dismissed the suit of the original plaintiff in toto by observing that he has failed to prove the due execution of the agreement to sell or receipt of earnest money by the defendants. It was further observed that the original plaintiff has failed to prove his readiness and willingness to perform his part of the contract.

Feeling aggrieved, the legal representatives of the original plaintiff preferred first appeal which was partly allowed for refund of earnest money.

Still dissatisfied, the plaintiff-appellants have approached this Court.

Learned counsel for the appellants contends that learned first appellate Court has rightly held the agreement to sell dated

14.05.1999 to be genuine but fell in error while holding that defendant Nos.1 to 4 being co-owners in joint possession are not competent to sell specific khasra numbers to the original plaintiff as per recital in the agreement to sell. Partial specific performance of sale agreement with regard to 1/3rd share only without joining co-purchaser Balbir Singh is permissible and in case, Balbir Singh is not pursuing the matter, it does not debar original plaintiff Romesh Chander to seek specific performance of the agreement to sell. He further contends that learned Courts below failed to appreciate that defendant No.5 was not a *bona fide* purchaser for value without notice. Even defendant Nos.1, 2 and 4 have admitted the case of the plaintiff.

I have heard learned counsel for the appellants and perused the case file.

As per the revenue record produced by both the parties, especially, jamabandi for the year 1993-94, Ex.P9, the suit land was part of land measuring 58 kanals 15 marlas of khewat No.36/37 and half share of land measuring 02 kanals 10 marlas of khewat No.35/36. Such land has been shown to be owned by Charan Dass and under his self cultivation. The names of defendant Nos.1 to 4 were entered into revenue record being legal heirs of Charan Dass on the basis of mutation of inheritance bearing No.453. In other words, defendant Nos.1 to 4 have become co-owners in joint possession of entire land measuring 60 kanals. In this way, defendant Nos.1, 2 and 4 were

rightly held to be not competent to sell specific portion to the original plaintiff by learned first appellate Court. Learned first appellate Court has correctly observed that the major portion of agreement to sell, Ex.P1, would remain unperformed without joining co-purchaser Balbir Singh, since the decree for smaller part of contract cannot be ordered. Further, parameters for the exercise of discretion vested by Section 20 of the Specific Relief Act, 1963, cannot be entrapped within any precise expression of language and the contours thereof will always depend on the facts and circumstances of each case. The ultimate guiding test would be the principles of fairness and reasonableness as may be dictated by the peculiar facts of any given case, which features the experienced judicial mind can perceive without any real difficulty. Reliance in this regard can be made to *Satya Jain Vs. Anis Ahmed Rushdie, 2012(12) JT 30*.

In the instant case, it is established on record that defendant No.3, namely, Vimla Devi, had not executed agreement to sell, Ex.P1 in favour of original plaintiff and thus, the appellants are not entitled to impugne the sale made by her in favour of defendant No.5, who is a bona fide purchaser for consideration without notice. No evidence worth name has been brought on record by the appellants to prove that defendant Nos.1, 2 and 4 have sold land measuring 3 kanals 6 marlas in favour of defendant Nos.6 and 7 and 23.12.1999 and as such, declaring such sale a nullity would not arise at all. Thus, the findings recorded

by learned first appellate Court on the issues under adjudication are hereby affirmed.

No other point has been urged. There are pure questions of facts. No substantial question of law arises for consideration of this Court.

Dismissed.

05.05.2016
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(JITENDRA CHAUHAN)
JUDGE